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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

Supreme Court, U.S.

FILED

SEP 11 1989

SH F. SPANIOL, JR.
CLERK

JAMES CONSTANT

Petitioner,

v.

HITACHI AMERICA, LTD., TEXAS INSTRUMENTS,
INC., ANALOG DEVICES, INC., NEC ELECTRO-
NICS, INC., SPENSLEY HORN JUBAS & LUBITZ,
SHEPPARD MULLIN RICHTER & HAMPTON, HOP-
GOOD CALIMAFDE KALIL & BLAUSTEIN, and
ROBERT HILLMAN,

Respondents.

JAMES CONSTANT,

Petitioner,

v.

MARCIAN HOFF, ROBERT HILLMAN, INTEL, INC.,
TEXAS INSTRUMENTS, INC., BLAKELY, SOKOLOFF,
TAYLOR & ZAFMAN, and MAKER SMITH & MILLS,

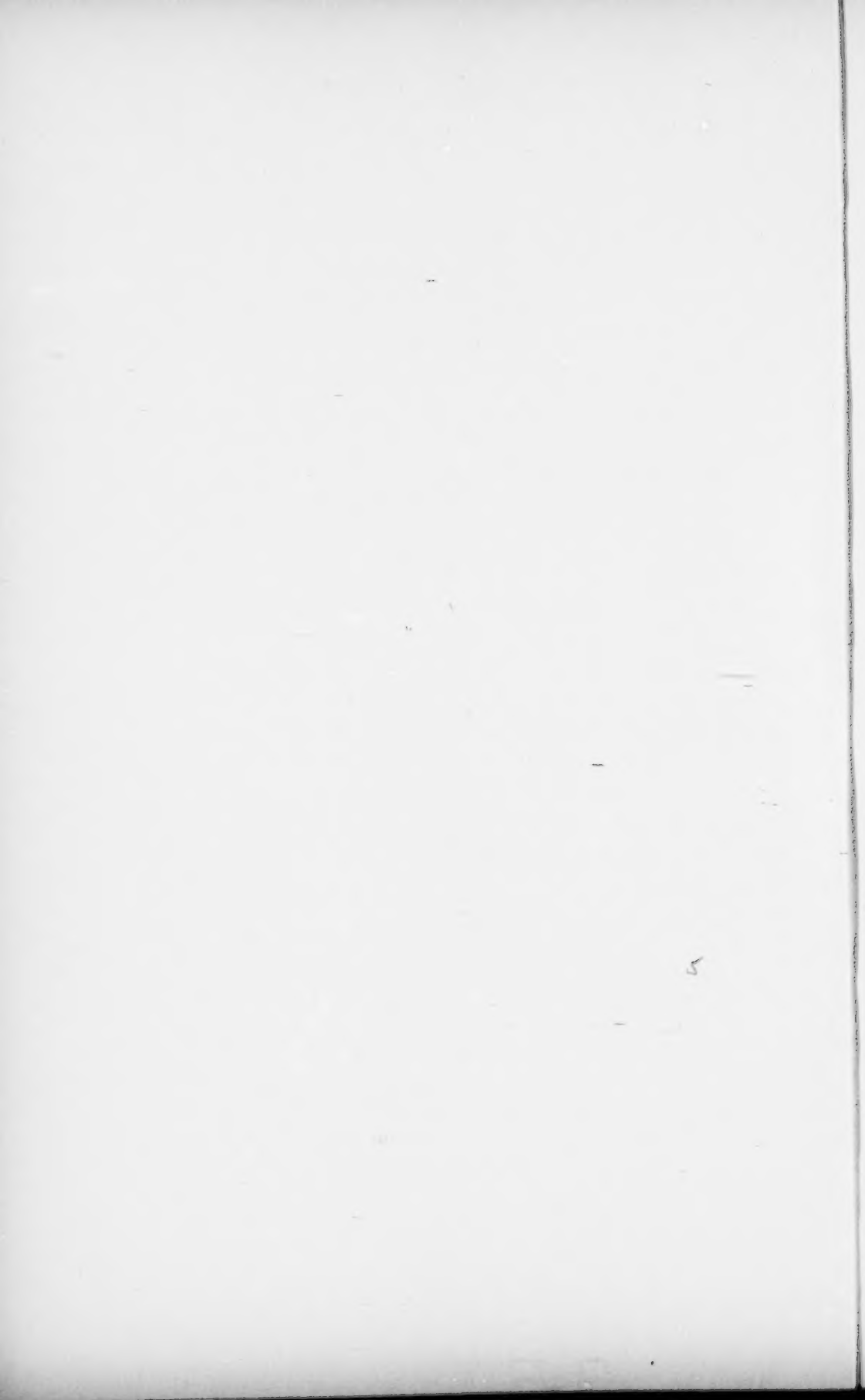
Respondents.

A P P E N D I X

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

James Constant
1603 Danbury Drive
Claremont, CA 91711
(714) 624-1801

Pro se petitioner



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APPENDIX A



UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-1195

JAMES CONSTANT,

Plaintiff-Appellant

v.

STEPHEN WILSON and ROBERT HILLMAN,

Defendants-Appellees

DECIDED: August 25, 1988

Before SMITH, NIES, and NEWMAN,

Circuit Judges.

SMITH, Circuit Judge.

DECISION

Appellant James Constant filed four lawsuits (the fraud cases) against most of the participants in a previous lawsuit (the patent case), alleging fraud in the procurement of the judgement in the patent case. The United States District Court for the

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Central District of California dismissed the fraud cases against the judge and special master, and granted summary judgment in favor of all remaining defendants on all issues. The court also imposed sanctions under FRCP 11. We affirm the decision of the district court. We also impose sanctions under FRAP 38 because we find this appeal to be frivolous.

OPINION

I. The Earlier Patent Case

The four cases on appeal are the outgrowth of previous litigation. In the earlier patent case, Constant, in 1985, sued 14 high technology companies for infringements of his United States patents Nos. 3,950,635 (the '635 patent) and 4,438,491 (the '491 patent). The complaint also contained several other theories of recovery and challenged the constitutionality of 35 USC 282. Constant conducted

his case pro se, as he has in the litigation now on appeal. The district court dismissed all counts except the infringement claims. The defendants filed counterclaims asking to have the patents declared invalid. Judge Wilson,^{1/} with the agreement of all parties, appointed a special master, Robert E. Hillman, to make recommendations to the court concerning motions for summary judgement on issues of patent invalidity. After the special master issued recommendations, concluding that the patents were invalid, the court independently determined that there were no material issues of contested facts and entered summary judgement declaring all claims of both patents to be

^{1/} The case was brought in the United States District Court for the Central District of California, and was initially heard before the Honorable Pamela A. Rymer. The case was transferred to the Honorable Steven V. Wilson on December 16, 1985. Although the cases here represent a collateral attack on the rulings by both Judges, only Judge Wilson was named as a defendant.



invalid under 35 USC 102(b) and 103.

Constant appealed to this court. We contested not only the judgements of invalidity, but also the dismissal of his constitutional claims, the legality of a summary judgement, the role and conduct of the special master, and several procedural rulings of the district court. This court has now ruled against him on all issues. Constant v. Advanced Micro-Devices, Inc., 7 USPQ2d 1057 (Fed. Cir. 1988) (Constant I).

II. The Fraud Cases

In October and November 1987, while the appeal of the patent case was pending before this court, Constant filed four overlapping lawsuits against various parties in the patent litigation alleging fraud in the procurement of the judgement in that case, and a variety of tortious activities such as misrepresentation, injurious false-



hood, and interference with property and contract rights. In Constant v. Hillman (CV-87-06592-R), the defendant was Robert E. Hillman, a patent attorney who served as a special master in the patent case, In Constant v. Wilson (CV-87-07315-R), Constant sued Hillman and the Honorable Steven V. Wilson, the judge who presided over the later phases of the patent case. In Constant v. Hoff (CV-87-06766-R), the defendants were Hillman, two of the defendants in the patent case (Intel, Inc., and Texas Instruments, Inc.), the law firms that represented them in the patent case, and Marcian Hoff, an expert witness for Intel, whose deposition was relied upon by the court when it invalidated the '491 patent. In Constant v. Hitachi (CV-87-07046-R), the defendants were again Hillman and the defendants in the patent case (Intel, Texas Instruments, Hitachi of America, Ltd.,



Analog Devices, Inc., and NEC Electronics, Inc.), together with their lawyers.

The district court (Real, C.J.) dismissed the cases against Hillman and Judge Wilson on grounds of judicial immunity. The court granted summary judgement in favor of the remaining defendants on all issues, and also imposed sanctions against Constant in the form of attorney fees under FRCP 11.

The four cases on appeal arise from a single set of factual circumstances and overlap in the parties, theories of recovery, grounds for the dismissals, and basis for the sanctions. In view of the duplicative nature of the cases, in this opinion they will all be considered together.

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III. Jurisdiction

A threshold question is whether this court has jurisdiction to hear these appeals. The Government, representing Hillman and Judge Wilson, argues that this court lacks jurisdiction. The only arguable source of jurisdiction for this court to consider this appeal is 28 USC 1295(a)(1) which empowers this court to entertain appeals of final decisions of a district court where the lower court's jurisdiction "was based, in whole or in part, on section 1338 of (title 28)". Section 1338 grants federal district courts original jurisdiction over "any civil action arising under any Act of Congress relating to patents". The Government points out that Constant's complaint does not explicitly allege jurisdiction



based on any statute relating to patents.^{2/}
The Government urges that this court dismiss the appeals for lack of jurisdiction, and then decline to transfer the cases under 28 USC 1631 since it would not be in the "interest of justice". See Galloway Farms, Inc. v. United States, 834 F2d 998, 1001 (Fed. Cir. 1987). The practical effect of such a dismissal would be that appellant

2/ The complaint alleged jurisdiction pursuant to 28 USC 1331 (federal question jurisdiction arising from constitutional claims), 28 USC 1332 (diversity), 28 USC 1343 (civil rights claims), and "pendent jurisdiction" arising from the previous case. The Government strenuously objects to the propriety of pendent jurisdiction in this case. The complaint does allege jurisdiction under 35 USC 154 (patent holder has the right to exclude others from making, using, and selling), and 35 USC 261 (a patent shall have the attributes of personal property), but these sections of the statute are relevant to jurisdiction, if at all, only in the context of Constant's constitutional theories which we have found to be erroneous.

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would not be able to appeal to the Ninth Circuit because the time for filing an appeal has elapsed and, therefore, all decisions of the district court would stand as final.

This court has inherent jurisdiction to determine its own jurisdiction. C.R. Bard, Inc. v. Schwartz, 716 F2d 874, 219 USPQ 197, 200 (Fed. Cir. 1983). Substance, not form, controls our evaluation of pleadings to determine jurisdiction. "Implicit in our mandate is the authority to recharacterize pleadings which would improperly evade the intent of Congress". Chemical Engineering Corp. v. Marlo, Inc., 754 F2d 331, 333, 222 USPQ 738, 740 (Fed. Cir. 1984); see also Williams v. Secretary of Navy, 787 F2d 552, 558 (Fed. Cir.



1986). ^{3/} Close analysis of the pleadings is especially appropriate in cases such as this where the pleadings were drafted by a pro se appellant who is not an attorney. See Haines v. Kerner, 404 US 519, 520 (1972).

Jurisdiction in the district court arises in part under the patent laws, and thus provides jurisdiction for an appeal to this court under 28 USC 1295(a)(1), in:

cases in which a well pleaded complaint establishes either that federal patent law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal patent law, in that patent law is a necessary element of one of the well pleaded claims.

Christianson v. Colt Industries Operating Corp.,
56 USLW 4625, 4627 (US June 17, 1988). The well

3/ There is no evidence here that Constant intentionally drafted his pleadings to evade the jurisdiction of the Federal Circuit. Indeed, he has brought his appeals to this court.



pleaded complaint rule provides that jurisdiction arises from the plaintiff's cause of action, and not from plaintiff's defenses to counterclaims or plaintiff's answers to the defendant's affirmative defenses. Louisville & N. R.R. v. Mottley, 211 US 149 (1908).

Although Constant's complaints do not explicitly request relief provided by the patent laws, when his complaints are construed under the liberal pleadings standard of Haines v. Kerner, we find that this court has jurisdiction over these appeals under two alternative theories: (1) these cases must be treated as, in effect, motions or proceedings that are properly part of a previous case, Constant I, over which this court has jurisdiction or (2) penetrating behind the wording of the complaints to the substance, "patent law is a necessary



element of one of the well-pleaded claims".
Christianson, 56 U.S.L.W at 4627.

First, this court has subject matter jurisdiction under 28 USC 1295(a) over entire cases, including dependant nonpatent issues. Atari, Inc. v. FS&A Group, Inc., 747 F2d 1422, 1429, 223 USPQ 1074, 1080-81 (Fed. Cir. 1984); Panduit Corp. v. All States Plastic Manufacturing Co., 744 F2d 1564, 1573, 223 USPQ 465, 470 (Fed. Cir. 1984). Our jurisdiction extends not only to the final decisions of the district court in the main case under 28 USC 1291 but also to certain other final orders such as interlocutory decisions made appealable under 28 USC 1292. A ruling of a district court under FRCP 60(b) is final and appealable. Ashland Oil, Inc. v. Delta Oil Products Corp., 806 F2d 1031, 1032, 1 USPQ2d 1073, 1074 (Fed. Cir. 1984). These cases presently on

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appeal properly are construed, in their substance, as motions to-reopen the judgments in the patent suit, Constant I, on grounds of fraud under Rule 60(b)(3). The decisions of the trial court are, in effect, denial of these motions over which we have jurisdiction.

Second, even though the patent laws are not explicitly invoked in the complaints, when the substance of the complaints is analyzed under the liberal pleadings standard of Haines v. Kerner, then we find that this court has section 1295(a) jurisdiction over the appeals from the district court cases under the well-pleaded complaint rule.

Examination of the complaints in the four "fraud" cases reveals that there are critical allegations that turn on construction of the patent laws, which Constant must prove in his support for relief:



(1) Each complaint asserts "fraud" and "falsehoods" of Hillman, a defendant in all four cases, consisted of the reports that he submitted as a special master on the validity of Constant's patents and his testimony about the contents of those reports. The recommendations of the special master discussed both factual and legal positions about the validity of the '635 and '491 patents. Those recommendations were adopted by the district court and formed the decisions that both patents were invalid. The judgement of invalidity was reviewed by this court in Constant I and was affirmed. Constant I, 7 USPQ2d at 1061-65. No court could find Hillman's statements to be false or to constitute elements of tortious acts without construing and applying the patent laws, particularly 35 USC 102(b)

and 103, to the facts of the patent case. Constant's case could only be sustained if a court were to find that the applicable portions of the patent statute mean something different from the interpretation of the district court as affirmed by this court. Many allegations against the other defendants also depend inextricably on first finding that Hillman's recommendations to the court were "false" and thus require the same construction of the patent laws.

(2) In Constant v. Hoff, the sole "fraud" alleged against Dr. Hoff, an expert witness in the patent case, was his testimony that, in his opinion, the '491 patent was anticipated by Intel's exhibit 5. None of the statements attacked by Constant concerns the truth or falsehood of facts. The statements involve questions of claim construction, such as whether the word "computer" in the preamble of claims in the '491 patent is a limitation and, if



so, whether a claimed computer requires a program to be enabling. (This court has affirmed the district court's rulings against Constant on these issues. Constant I, 7 USPQ2d at 1062-63.).

Clearly, construction of the patent law is required to determine whether Constant has any cause of action against Dr. Hoff. The cases against all of the other defendants in Constant v. Hoff depend essentially on whether the same opinions of Dr. Hoff and Hillman are "false", which cases in turn require interpretation of the patent laws.

(3) The complaint in Constant v. Wilson asks the court to declare the judgement in the patent case to be void because the district court lacked jurisdiction. Constant contends that the federal courts lack jurisdiction to invalidate any patent in an infringement suit because 35 USC 282 is unconstitu-



tional and that the Patent Office has exclusive jurisdiction to decide the validity of patents. These theories were rejected by the district court in the patent case, and we affirmed in Constant I, 7 USPQ2d at 1058-59. This question clearly arises under the patent laws.

Thus, Constant is asserting rights that could not exist under one construction of the patent laws but might exist under an opposite construction. In each of these cases, "patent law is a necessary element of one of the well-pleaded claims". Christianson, 56 U.S.L.W. at 4627. Jurisdiction, therefore, exists for this court to decide the appeals of the four fraud cases even though the complaints do not explicitly invoke the patent laws.

This does not imply that this court should assume jurisdiction over every case involving charge of fraud in the procure-



ment of a judgement in a patent case. We have jurisdiction in these particular cases because these cases depend on allegations that, although cloaked in terms of fraud, actually turn only on legal issues that would be sustained by one construction of the patent laws and defeated by an opposite construction.

IV. The Merits

There are multiple reasons for affirming the decisions of the district court. The district court correctly ruled that the judge and the special master are both absolutely immune from liability. See Butz v. Economou, 438 US 478, 508-17 (1978); Pierson v. Ray, 386 US 547, 553-554 (1967). Judicial immunity extends not only to the judge, but also to all participants who perform an integral part in the judicial process. Butz, 438 US at 512. A special master is

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a judicial officer. In re Gilbert, 276 US 6, 9 (1928); FRCP 53. A special master is this entitled to absolute immunity for acts performed within the scope of his official duties. We have reviewed the actions of the special master and found that they were all properly within the limits of his appointment. Constant I, 7 USPQ2d at 1061. Constant's lawsuits present exactly the type of vexatious and frivolous suits against judges and judicial personnel that the doctrine of judicial immunity is designed to guard against. See Forrester v. White, 108 S. Ct. 538, 544 (1988). The cases cited by Constant to argue for qualified immunity or the inappropriateness of a dismissal under FRCP 12(b)(6) are inopposite and are generally harmful to his case.

We also note that had it been permissible to inquire into the merits

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of Constant's complaints against the judge and the special master, he would have lost on all issues. The rulings by Judge Wilson and the actions of the special master of which Constant complains were reviewed by this court and were found to be entirely proper. Constant I, 7 USPQ2d at 1060-61, 1065. Other than disagreeing with the special master's legal recommendations, Constant's charge of "fraud" is based on his view that Hillman was unqualified to serve as a special master and that Hillman knowingly misrepresented himself as qualified. This court has specifically affirmed the lower court's finding that Hillman was well qualified to serve as a special master for that litigation. Id at 1061. We have also reviewed and affirmed Judge Wilson's rulings concerning the special master which rulings Constant now improperly tries to label as "fraud". Id at 1060-61.

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In his summary judgement orders, Chief Judge Real correctly determined that Constant's cases were an impermissible collateral attack on the previous judgements invalidating the '491 and '635 patents and were barred by the doctrine of *res judicata*. The proper course for a dissatisfied litigant to redress legal errors is through appeal. not collateral attack on the judgement in a separate lawsuit, MGA, Inc. v. General Motors, Corp., 827 F2d 729, 731-32, 3 USPQ2d 1762, 1763 (Fed. Cir. 1987), cert. denied, 108 S. Ct. 705 (1988). Even though a second suit "has an independent purpose and contemplates some other relief, it is a collateral attack if it must in some fashion overrule a previous judgement!" Miller v. Meinhard-Commercial Corp., 462 F2d 358, 360 (5th Cir. 1972).



Relitigation of claims and issues through collateral attack is barred by the principles of res judicata. MGA, 827 F2d at 731-32, 3 USPQ2d at 1763; Young Engineers, Inc. v. United States International Trade Commission, 721 F2d 1305, 1314-15, 219 USPQ 1142, 1150-51 (Fed. Cir. 1983). Res judicata is a broad term referring to both claim preclusion and issue preclusion (collateral estoppel). Id at 1314, 219 USPQ at 1150; Restatement (Second) of Judgements 13 (1982). Issue preclusion bars a litigant from relitigating issues that were actually litigated by him in a previous lawsuit if:

- (1) The issue is identical to one decided in the first action;
 - (2) the issue was actually litigated in the first action;
 - (3) resolution of the issue was essential to a final judgement in the first action;
 - and (4) plaintiff had a full and fair opportunity to litigate the issue in the first action.
- (Footnote omitted).

A.B. Dick Co. v. Burroughs Corp., 713 F2d 700,



702, 218 USPQ 965, 967 (Fed. Cir. 1983),
cert den 464 US 1042 (1984).

As discussed in Part III, supra, the "fraud" cases actually seek to reverse the invalidation of Constant's patents in the earlier patent case. Constant's complaints also explicitly seek to relitigate various issues of the district court in that case concerning the special master, discovery, whether the proceedings of the patent action violated Constant's right to due process, the constitutionality of 35 USC 282, the constitutionality of summary judgement, the applicability of 42 USC 1985(3) as a cause of action in the patent suit, and the certification of a class action on behalf of inventors. Relitigation of all of these issues is barred by the principles of res judicata.

The district court correctly determined that Constant failed to raise any

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the problem is of great importance in the theory
of the differential equations of the second order.

issue of extrinsic fraud as required set aside a prior judgement, Wood v. McEwen, 644 F2d 797, 801 (9th Cir. 1981), cert den 455 US 942 (1982), and that he failed to plead fraud with the particularity required by FRCP 9(b). Miscellaneous Service Workers v. Philco-Ford Corp., 661 F2d 776, 782 (9th Cir. 1981). The court properly dismissed the claims under 42 USC 1983 for lack of state action, Haldane v. Chagnon, 345 F2d 601, 604-05 (9th Cir. 1965), and the claims under section 1985(3) for lack of the requisite racial- or class-based animus. United Brotherhood of Carpenters v. Scott, 463 US 825, 839 (1983).

V. Sanctions

The district court imposed sanctions in the form of attorney fees because it found Constant's claims to be frivolous, unreasonable, and without merit, and found

that they had subjected the court and the defendants to needless annoyance, expense, and harassment. An award of attorney fees is justified where groundless lawsuits are pursued merely as a reprisal against prevailing litigants and officers of the court. Cook v. Peter Kiewit Sons Co., 775 F2d 1030, 1036-37 (9th Cir. 1985), cert den, 476 US 1183 (1986), and where litigation is pursued after it becomes clear that it is unreasonable to do so. Christiansburg Garment Co. v. Equal Employment Opportunity Commission, 434 US 412, 422 (1978). Under these standards, the imposition of Rule 11 sanctions was clearly justified. It is clear from the record that these lawsuits were intended to harass judicial officers and prevailing litigants in the patent suit.

Many of Constant's attempts to

punish the participants in the patent case are rather scurrilous. For example, the complaints allege that "(a)s a result of Hillman's wanton, willful, knowing and deliberate acts, Mr. Hillman has, on information and belief, received payments and other benefits from defendants (in the patent case)". Thus, Constant attempted to impart an air of impropriety to the fact that the corporate defendants have had to pay the fees for Hillman's services as a special master. In the usual course of events the plaintiff and defendants have split the fees for the special master. Because of the disparity of resources between the pro se plaintiff and the corporate defendants, the district court allowed Constant's motion to require that the defendants bear the entire burden. This is one of several instances in which, after accepting the benefits of special allowances and dispensations from the court because of his

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pro se status, appellant has twisted the meaning of these generous acts into an appearance of impropriety and conspiracy.

Constant's arguments that the court should have taken relative wealth into account do not require reversal. This issue was not raised in the district court, and Constant has provided no evidence of inability to pay. The district court had discretion in determining the amount of sanctions, and we see no abuse of discretion in the amount set by that court. Stewart v. American International Oil & Gas Co., 845 F2d 196, 202 (9th Cir. 1988).

Constant's appeals to this court were similarly frivolous, subjected the appellees to burdensome legal expenses, and caused unnecessary work for this court. It should have been clear from the opinion of the district court and from the imposition of sanctions that further prosecution of these lawsuits would be unreasonable and frivolous. This

court has the power to sanction such frivolous appeals under FRAP 38. Zuger v. United States, 834 F2d 1009, 1010 (Fed. Cir. 1987); Devices for Medicine, Inc. v. Boehl, 822 F2d 1062, 1069, 3 USPQ2d 1288, 1294 (Fed. Cir. 1987); Asberry v. United States Postal Service, 692 F2d 1378, 1382, 215 USPQ 921, (Fed. Cir. 1982). Accordingly, we impose a sanction of \$2,000 against appellant James Constant for bringing these frivolous appeals, and require him to pay the private appellees both reasonable attorney fees and costs incurred by them on this appeal.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-1195

JAMES CONSTANT,

Appellant,

v.

STEPHEN WILSON and ROBERT HILLMAN,

Appellees.

ORDER

A suggestion for rehearing in banc
having been filed in these cases,

UPON CONSIDERATION THEREOF, it is
ORDERED that the suggestion for rehearing
in banc is declined.

FOR THE COURT

Francis X. Gindhart
Clerk

10/11/88

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- 1914 -

APPEAL FROM

DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- 1914 -

- 1914 -

IN RE THE ESTATE OF JAMES H. HARRIS

DECEASED, PLAINTIFF IN ERROR,

VERSUS

THE NEW YORK LIFE INSURANCE COMPANY,

DEFENDANT IN ERROR.

- 1914 -

- 1914 -

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-1197

JAMES CONSTANT,

Plaintiff-Appellant,

v.

HITACHI AMERICA, LTD., TEXAS INSTRUMENTS, INC.,
ANALOG DEVICES, INC., NEC ELECTRONICS, INC.,
SPENSLEY HORN JUBAS & LUBITZ, SHEPPARD
MULLIN RICHTER & HAMPTON, HOPGOOD CALIMAFDE
KALIL & BLAUSTEIN, and ROBERT HILLMAN,

Defendants-Appellees.

88-1198

JAMES CONSTANT,

Plaintiff-Appellant,

v.

MARCIAN HOFF, ROBERT HILLMAN, INTEL, INC.,
TEXAS INSTRUMENTS, INC., BLAKELY SOKOLOFF
TAYLOR & ZAFMAN, BAKER SMITH & MILLS,

Defendants-Appellees.

CORRECTED ORDER

Before SMITH, Senior Circuit Judge, NIES and
NEWMAN, Circuit Judges.

PER CURIAM.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

1950-1951

PHYSICS 101

LECTURE NOTES

These lecture notes were prepared by the author for the use of students in the Physics 101 course. They are intended to supplement the textbook and provide a more detailed treatment of the topics covered in the lectures. The notes are organized into chapters, each of which corresponds to a lecture. The chapters are: Chapter 1: Kinematics; Chapter 2: Dynamics; Chapter 3: Energy; Chapter 4: Momentum; Chapter 5: Rotational Motion; Chapter 6: Oscillations; Chapter 7: Waves; Chapter 8: Optics; Chapter 9: Modern Physics.

Author: [Name]

Page 1

PHYSICS 101

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Author: [Name]

Page 2

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PHYSICS 101

James Constant appealed to this court the decisions of the United States District Court for the Central District of California in Constant v. Hillman, CV-87-06592-R, Constant v. Wilson, CV-87-07315-R, Constant v. Hoff, CV-87-06766-R, and Constant v. Hitachi, CV-87-07046-R. Constant's appeals were considered together and, on August 25, 1988, we affirmed the district court's decisions, including its imposition of sanctions under FRCP 11. Because we determined that his appeals were frivolous, we imposed our own sanction of \$2,000 against Constant and required him to pay to the private appellees both reasonable attorney fees and costs incurred by them on the appeal. Subsequently, appellees Hitachi America, Ltd., Texas Instruments, Inc., Sheppard Mullin Richter & Hampton, Marcian Hoff, Intel, Inc., Blakely, Sokoloff, Taylor & Zafman, and Baker, Smith & Mills filed their applications

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY OF ARTS

OFFICE OF THE DEAN

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FAX: 773-936-5001

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for attorney fees, with supporting documents. Having reviewed and considered the appellee's attorney fees applications and supporting documents, it is

ORDERED:

(1) Constant shall pay, before August 10, 1989, to Hitachi America, Ltd., the sum of \$18,303.35 in attorney fees and costs.

(2) Constant shall pay, before August 10, 1989, to Intel, Inc., Marcian Hoff, and Blakely, Sokoloff, Taylor & Zafman the sum of \$12,707.50 in attorney fees and costs.

(3) Constant shall pay, before August 10, 1989, to Texas Instruments, Inc., Baker, Smith & Mills, and Sheppard Mullin Richter & Hampton the sum of \$25,626.08 in attorney fees and costs.

(4) The judgements here entered may be enforced by execution procedures in the Central District of California or in such

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other place as may be lawfully appropriate.

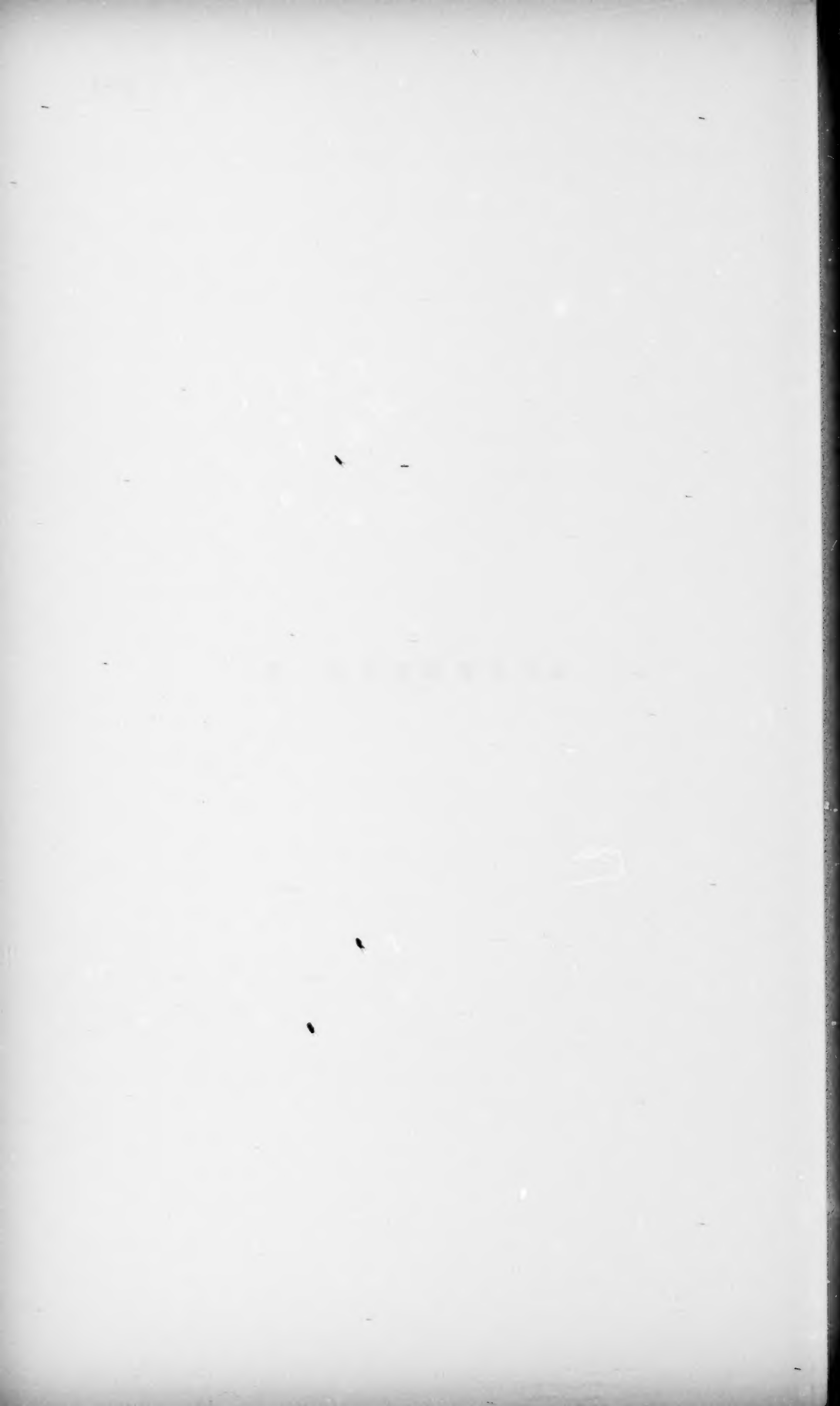
FOR THE COURT

Edward S. Smith
Senior Circuit Judge

July 20, 1989

Date

APPENDIX B



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 07046 R

JAMES CONSTANT,
Plaintiff,

v.

HITACHI AMERICA, LTD ET ALS,
Defendants.

Defendants Texas Instruments and Sheppard, Mullin, Richter & Hampton having moved this Court for an award of sanctions pursuant to Federal Rule of Civil Procedure 11, the Court having considered the pleadings and papers filed by all parties regarding said defendant's motion for summary judgement, the Court having considered defendant's memorandum of points and authorities and declaration in support of defendant's application for sanctions and plaintiff's opposition thereto, the matter having come on for noticed hearing before

THE HISTORY OF THE
CITY OF NEW YORK

FROM 1624 TO 1898

BY
JOHN EDGAR

VOLUME I

1624-1666

NEW YORK: PUBLISHED BY THE
AUTHOR

1898

The history of the city of New York from 1624 to 1898 is a story of growth and development. It begins with the first Dutch settlement in 1624, when a group of men led by Willem Kieft established a trading post on the island of Manhattan. Over the years, the settlement grew into a city, and the Dutch maintained control until 1674, when the British took over. The city then became a part of the British Empire, and it was during this time that it began to develop into a major center of commerce and industry. The American Revolution brought about a new era of independence, and the city played a key role in the struggle for freedom. After the war, the city continued to grow, and it became one of the most important cities in the United States. The 19th century was a time of great change, and the city of New York was at the forefront of the movement. It was during this time that the city became a world-famous center of culture and art, and it was also a major center of industry and commerce. The city's growth was not without challenges, but it was a testament to the resilience and spirit of the people of New York.

the Court on January 11, 1988 and plaintiff and defendants having an opportunity to be heard, and the Court being fully advised on the premises,

NOW THEREFORE IT IS ORDERED that the within action was filed by plaintiff James Constant in violation of Federal Rule of Civil Procedure 11 and plaintiff James Constant shall within thirty days from the date of this order pay as sanctions to defendants Texas Instruments and Sheppard, Mullin, Richter & Hampton their reasonable attorneys fees and expenses in the defense of this action in the total amount of \$9,694.10. Payment shall be delivered to defendant's attorney Paul S. Malingagio.

DATED: January 25, 1988

Manuel L. Real

UNITED STATES DISTRICT JUDGE

The Court in *Grain Processing* also held that the
taxpayers' right to deduct the cost of the
interest on the loan was not affected by the
fact that the loan was used to purchase the
property.

Now, however, it is apparent that the
taxpayers' right to deduct the cost of the
interest on the loan is not affected by the
fact that the loan was used to purchase the
property. The Court in *Grain Processing* held
that the taxpayers' right to deduct the cost of
the interest on the loan was not affected by
the fact that the loan was used to purchase
the property. The Court in *Grain Processing*
held that the taxpayers' right to deduct the
cost of the interest on the loan was not
affected by the fact that the loan was used
to purchase the property. The Court in
Grain Processing held that the taxpayers'
right to deduct the cost of the interest on
the loan was not affected by the fact that
the loan was used to purchase the property.

It is thus apparent that the taxpayers'
right to deduct the cost of the interest on
the loan is not affected by the fact that
the loan was used to purchase the property.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 07046 R

JAMES CONSTANT,
Plaintiff,

v.

HITACHI AMERICA, LTD ET ALS,
Defendants.

The Court having read and considered the application for attorney fees submitted by defendants Analog Devices, Inc. ("Analog"), NEC Electronics Inc ("NEC") and Hopgood, Calimafde, Kalil, Blaustein & Judlowe ("Hopgood"), pursuant to Rule 11, Federal Rules of Civil Procedure, and having read and considered the opposition by plaintiff James Constant to the application, and this Court having held a hearing on January 11, 1988 concerning the application for attorney fees, in which plaintiff and these defendants

were permitted an opportunity to present oral arguments concerning the application, the application is granted and

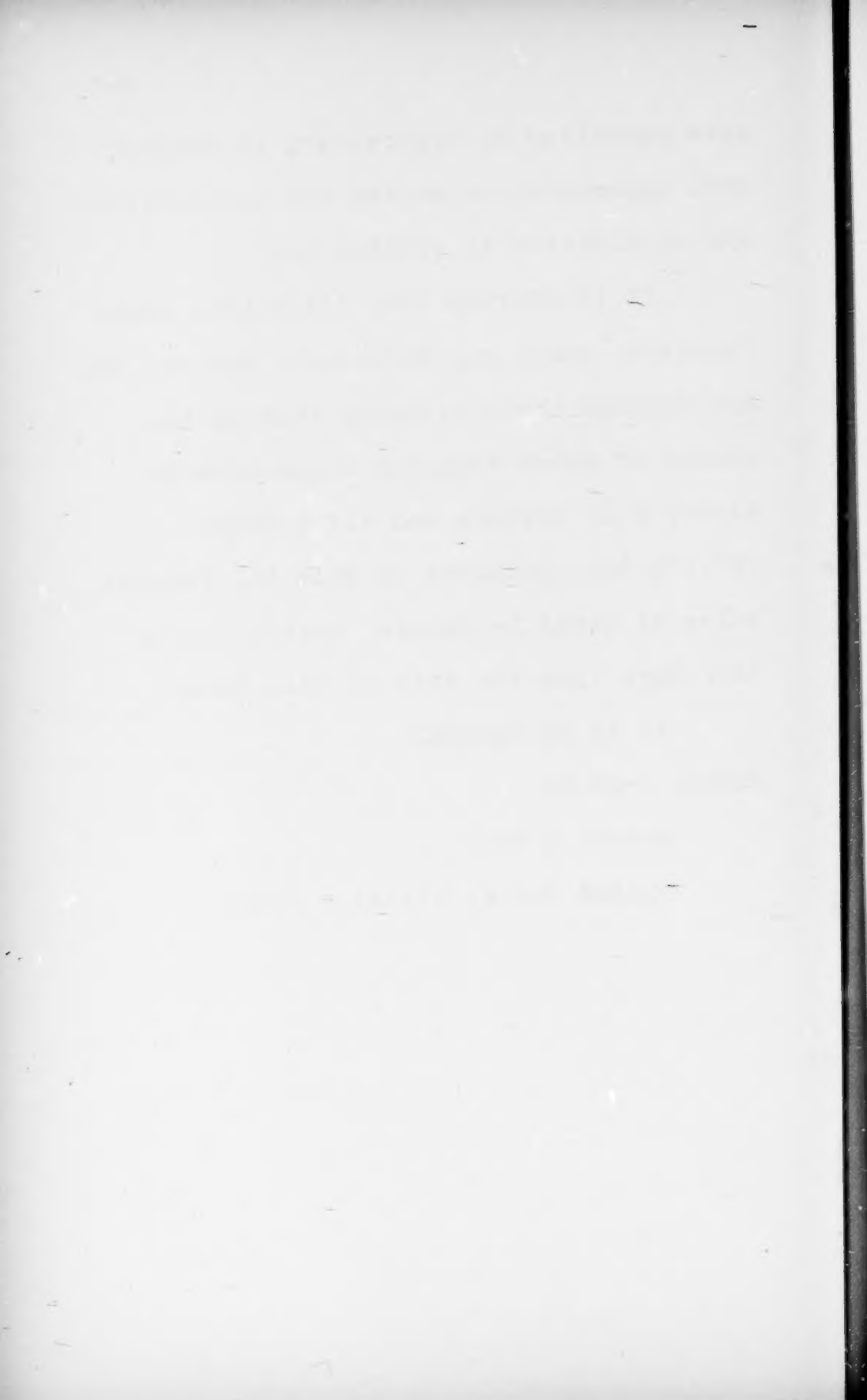
IT IS ORDERED THAT plaintiff, James Constant, shall pay defendants Analog, NEC and Hopgood their attorney fees in the amount of Seven Thousand Three Hundred Ninety Four Dollars and Fifty Cents (\$7,394.50), pursuant to Rule 11, Federal Rules of Civil Procedure, within thirty (30) days from the date of this Order.

IT IS SO ORDERED

DATED: 1-25-88

Manuel L Real

United States District Judge



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 07046 R

JAMES CONSTANT,
Plaintiff,

v.

HITACHI AMERICA, LTD ET ALS,
Defendants.

This Court, having heard the arguments of the parties has decided --notwithstanding the fact that the plaintiff was proceeding pro se-- that the complaint in this action: (i) was not grounded in fact; and (ii) was not warranted by existing law, or a good faith argument for the extension, modification or reversal of existing law. Further, this Court has reviewed defendant Hitachi America Ltd's request for attorney's fees in this case of \$7,298.75 and determined that those attorney's fees are reasonable under

under the circumstances. Therefore, as a sanction under Federal Rule of Civil Procedure 11, this Court hereby finds that the plaintiff James Constant should pay Hitachi America Ltd. its attorney's fees.

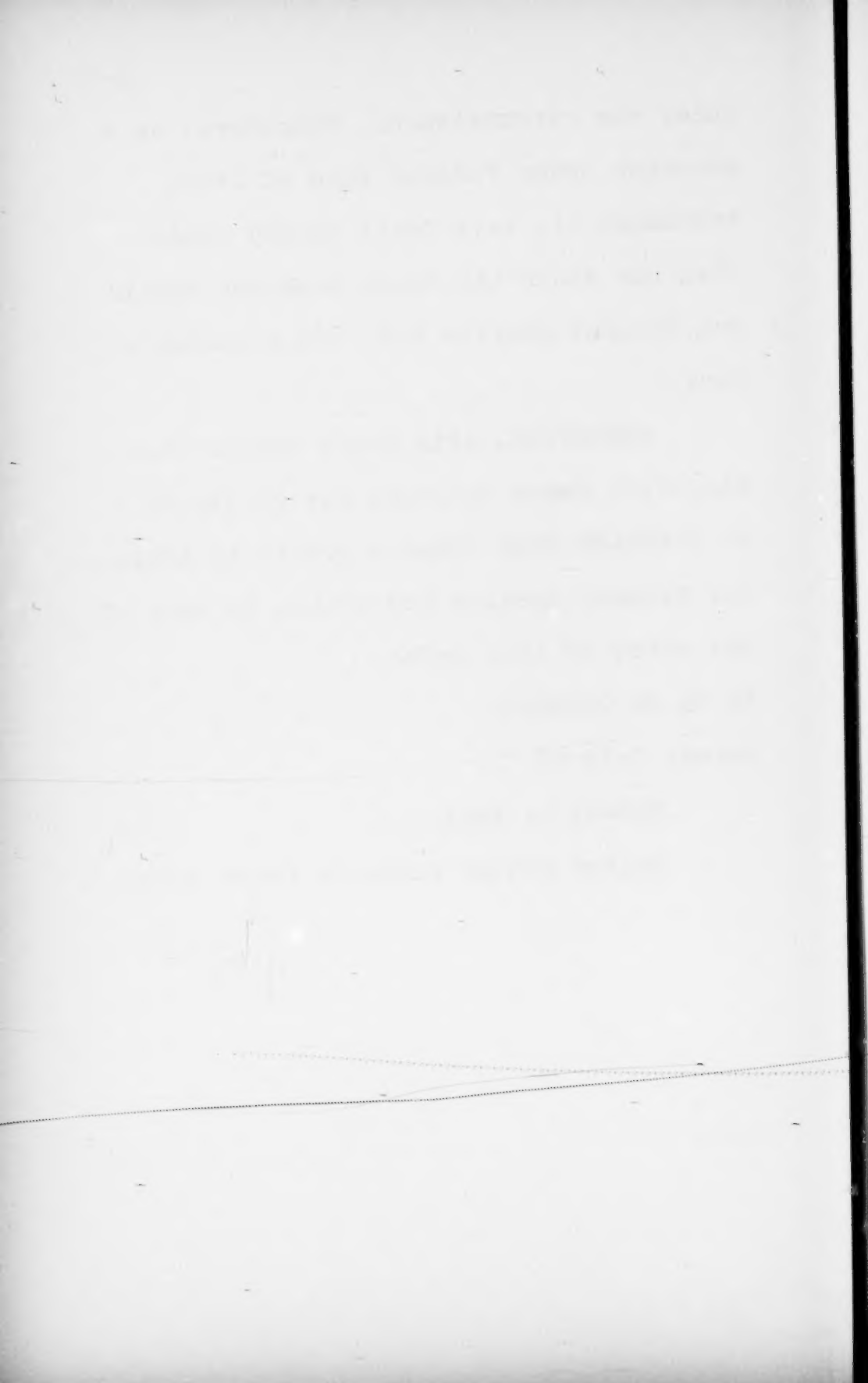
THEREFORE, this Court orders that plaintiff James Constant pay \$7,298.75 to SPENSLEY HORN JUBAS & LUBITZ in trust for Hitachi America Ltd within 10 days of the entry of this Order.

IT IS SO ORDERED

Dated: 2-16-88

Manuel L. Real

United States District Court Judge



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 06766 R

JAMES CONSTANT,
Plaintiff,

v.

MARCIAN HOFF, ET ALS,
DEFENDANTS

Defendants Texas Instruments and Baker, Smith & Mills having moved this Court for an award of sanctions pursuant to Federal Rule of Civil Procedure 11, the Court having considered the pleadings and papers filed by all parties regarding said defendant's motion for summary judgement, the court having considered defendant's memorandum of points and authorities and declaration in support of defendant's application for sanctions and plaintiff's opposition thereto, the matter having come on for noticed hearing before

CHIEF OF THE BUREAU OF
THE DISTRICT OF COLUMBIA
WASHINGTON, D. C.

TO THE HONORABLE
THE SECRETARY OF THE
NAVY
WASHINGTON, D. C.

SIR:

I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter of the proposed purchase of the land for the establishment of a new naval yard at the city of Washington, D. C.

The matter is now under consideration and will be brought before the proper authorities at an early date.

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith

Very respectfully,
J. M. Smith

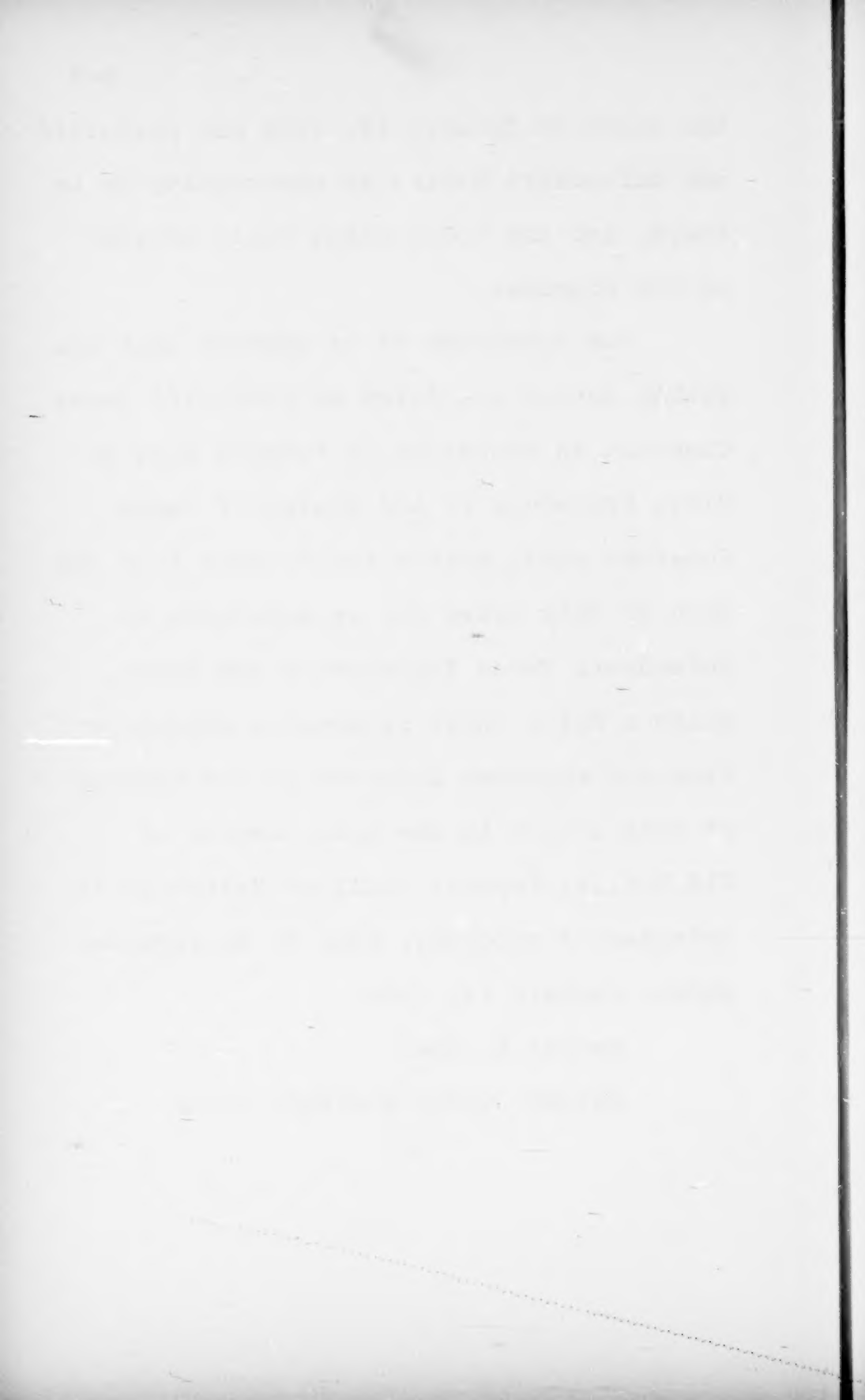
the Court on January 11, 1988 and plaintiff and defendants having an opportunity to be heard, and the Court being fully advised on the premises,

NOW THEREFORE IT IS ORDERED that the within action was filed by plaintiff James Constant in violation of Federal Rule of Civil Procedure 11 and plaintiff James Constant shall within thirty days from the date of this order pay as sanctions to defendants Texas Instruments and Baker, Smith & Mills their reasonable attorneys fees and expenses incurred in the defense of this action in the total amount of \$16,016.16. Payment shall be delivered to defendant's attorney, Paul S. Malingagio.

DATED: January 22, 1988

Manuel L. Real

UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 06766 R

JAMES CONSTANT,
Plaintiff,

v.

MARCIAN HOFF, ET ALS,
Defendants

WHEREAS, Defendants Marcian Hoff ("Hoff"), Intel Corporation ("Intel") and Blakely, Sokoloff, Taylor & Zafman ("BSTZ") have joined in the Motion for an Award of Sanctions against Plaintiff James Constant pursuant to Rule 11 of the Federal Rules of Civil Procedure ("FRCP"), which Motion was brought by Co-Defendants Texas Instruments and Baker, Smith & Mills;

WHEREAS, this Court has considered the briefing and evidence of the parties with respect to this Motion and all pleadings filed herein and has considered

the arguments of the parties at the hearing for this Motion, which hearing was held on January 11, 1988;

WHEREAS, this Court has determined that the within action was filed by Plaintiff James Constant in violation of Rule 11 of the FRCP and that Plaintiff shall pay as sanctions to Defendants Hoff, Intel and BSTZ their reasonable attorney fees in the total amount of \$4,425 incurred in defense of this action;

THEREFORE,

IT IS HEREBY ORDERED THAT:

Plaintiff James Constant shall pay monetary sanctions of \$4,425 to Blakely, Sokoloff, Taylor & Zafman in trust for defendants Hoff, Intel and BSTZ. Plaintiff shall pay this amount within thirty (30) days of the entry of this order.

Date: 1-22-88

The Honorable Manuel L. Real
United States District Court Judge



CERTIFICATE OF SERVICE

I certify that the foregoing
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT and APPENDIX were
served on all parties by mailing first
class three (3) true copies to each of
them on 11 September, 1989 addressed
as follows:

STEPHEN PETERSEN
UNITED STATES ATTORNEY
312 S. SPRING STREET
LOS ANGELES, CA 90012

MARTIN R. NORM
SPENCLEY NORM JUBAS & LUBITZ
1880 CENTURY PARK EAST, 5TH FLOOR
LOS ANGELES, CA 90067
(213)553-5050

EDWIN H. TAYLOR
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN
1245 OAKHEAD PARKWAY, SUITE 101
SUNNYVALE, CA 94086

JOHN W. CALINAFDE
HOPGOOD, CALINAFDE, ET AL
60 EAST 42ND STREET
NEW YORK, NY 10165
(212)986-2480

JERRY R. SELINGER
BAKER, SMITH & HILLS, PC
500 LTV CENTER, 2001 ROSS AVENUE
DALLAS, TX 75201-2916
(214)220-8200

PAUL J. MALINGAGIO
SHEPPARD, MULLIN, RICHTER & HAMPTON
333 SOUTH HOPE STREET, 48TH FLOOR
LOS ANGELES, CA 90071

REPORT OF THE

COMMISSIONER OF THE

LAND OFFICE OF THE

STATE OF NEW YORK

FOR THE YEAR 1887

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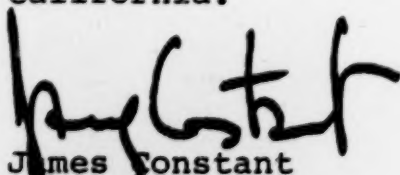
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Barbara Herwig/R. Rasmussen
Dept of Justice, Civil Division
Appellate Staff
10th & Penn Ave., NW Rm 3631
Washington, D.C. 20530

Solicitor General
Department of Justice
Washington, D.C. 20530

I declare under penalty of
perjury that the foregoing is true
and correct.

Executed on 11 September,
1989 at Claremont, California.


James Constant
1803 Danbury Dr
Claremont, CA 91711
(714) 624-1801

pro se petitioner